

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

RYAN O'MALLEY,

Plaintiff,

v.

EDWARD LUKOWICH and BOROUGH  
OF AVOCA,

Defendants.

NO. 3:08-CV-0680

(JUDGE CAPUTO)

**MEMORANDUM ORDER**

Before me is Plaintiff's Complaint. (Doc. 1.) The Plaintiff has alleged jurisdiction pursuant to 42 U.S.C. § 1983. (*Id.* ¶ 4.) However, Section 1983 is not a jurisdictional statute, and only creates a remedy. *Gonzalez v. Young*, 560 F.2d 160, 163-64 (3d Cir. 1977). Plaintiff alleges supplemental jurisdiction, but such an allegation fails to create original jurisdiction in the district court.

Subject matter jurisdiction must be averred in the complaint. FED. R. CIV. P. 8(a). Plaintiff has failed to properly do so.

**NOW**, this 16th day of May, 2008, upon review of the Plaintiff's Complaint, **IT IS HEREBY ORDERED THAT** this action is **DISMISSED** without prejudice based upon lack of subject matter jurisdiction.

/s/ A. Richard Caputo

A. Richard Caputo  
United States District Judge